

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jesse Spieler-Jones	Team: Team # 5	CCRB Case #: 200913866	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/01/2009 9:03 PM	Location of Incident: in front of 141 Albany Avenue	Precinct: 77	18 Mo. SOL 3/1/2011	EO SOL 3/1/2011	
Date/Time CV Reported Wed, 09/02/2009 1:31 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/08/2009 1:45 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Darryl Chen	29402	903608	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joshua Winters	01708	945106	077 PCT
2. SGT Georgina Gonzalez	05276	896880	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Darryl Chen	Force: PO Darryl Chen used physical force against § 87(2)(b)	
B.POM Darryl Chen	Abuse: PO Darryl Chen issued a summons to § 87(2)(b)	

### Case Summary

On September 2, 2009, § 87(2)(b) filed this complaint via telephone with the Internal Affairs Bureau of the NYPD (encl. 3A). The complaint was subsequently referred to the CCRB, which received it on September 8, 2009. On September 1, 2009, at approximately 9:03 p.m., outside of 141 Albany Avenue in Brooklyn, PO Darryl Chen arrested § 87(2)(b) for tampering with physical evidence. PO Chen later released § 87(2)(b) with only a summons for disorderly conduct. The following allegations resulted:

- **Allegation A – Abuse of Authority:** PO Darryl Chen used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

- **Allegation B – Abuse of Authority:** PO Darryl Chen issued a summons to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

### Results of Investigation

#### Civilian Statements

##### Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male who is 5'8.5" tall, weighs 210 lbs and has black hair and brown eyes. § 87(2)(b)

##### Testimony

§ 87(2)(b) made statements regarding this incident in filing his complaint with IAB via telephone on September 2, 2009 (encl. 3A), over the telephone to the CCRB on September 22, 2009 (encl. 5A), and in-person at the CCRB on September 29, 2009 (encl. 6A-G). § 87(2)(b)'s testimony is summarized below with inconsistencies noted.

§ 87(2)(b) provided differing accounts of the incident. In his sworn statement to the CCRB on September 29, 2010, § 87(2)(b) stated that on September 1, 2009, at approximately 9:03 p.m., he was walking toward his residence at 135 Albany Avenue in Brooklyn when he felt the arm of an officer identified by the CCRB as PO Darryl Chen reach around his neck from behind. § 87(2)(b)'s neck was making contact with the crook of PO Chen's elbow. § 87(2)(b) had not seen or heard any police officers or police vehicles before this time. Somehow, § 87(2)(b) came to be on the ground on his stomach. § 87(2)(b) was unable to provide any details regarding how this occurred and could not recall a single event that took place between the time that he was grabbed and the time that he found himself on the ground. He did not lose consciousness at any time. During his telephone statement on September 22, 2009, § 87(2)(b) stated that he was unsure of whether or not PO Chen placed him in a chokehold before or after he was handcuffed and attributed his uncertainty to the fact that "it happened so quick."

However, in filing his complaint with IAB on September 2, 2009, § 87(2)(b) stated that he had been walking in the vicinity of 135 Albany Avenue when PO Chen and PO Winters pulled up in a vehicle and said, "Sir, come!" § 87(2)(b) did not know whether or not the officers were speaking to him and consequently did not comply with their order. When § 87(2)(b) fixed his glasses, one of the officers accused him of having put something in his mouth. Either one or both officers § 87(2)(b) did not specify) then tackled him to the ground, breaking his leg in the process.

§ 87(2)(b) laid on the ground for approximately one minute before he was handcuffed. During this time, PO Chen maintained his grip on § 87(2)(b)'s neck. § 87(2)(b) felt his right

ankle being twisted but could not see who was twisting it. He did not make any attempt to resist the officers and his breathing remained unobstructed. He was then handcuffed and placed inside an RMP. § 87(2)(b) initially stated that he was “thrown” inside the RMP, but, when asked how this was done, was unable to describe it and ultimately clarified that it was “not excessive.” § 87(2)(b) then noticed an officer identified by the CCRB as PO Joshua Winters entering the RMP. The officers escorted § 87(2)(b) to the 77<sup>th</sup> Precinct stationhouse.

At the stationhouse, PO Chen escorted § 87(2)(b) to a holding cell, told him that swallowing drugs could potentially kill him and then left him in the holding cell. Two hours later, PO Chen returned, told § 87(2)(b) that he did not look like a typical drug user and informed him that he would be issued a summons for obstructing traffic. PO Chen told § 87(2)(b) “I’m going to put that you panicked,” and appeared to be suggesting that he was doing this as a favor to § 87(2)(b). PO Chen then issued § 87(2)(b) the summons and § 87(2)(b) walked home. § 87(2)(b) then called 911, informed the 911 operator of the incident and was transported to § 87(2)(b) Medical Center, where he was visited by and provided a statement to an officer identified by the CCRB as Sgt. Georgina Gonzalez. He was ultimately diagnosed with an ankle sprain and released. At the time of his interview, § 87(2)(b) was experiencing pain on the left side of his neck, which he assumed was caused by PO Chen’s actions during the incident.

#### **Statements to Medical Personnel (encl. 5A)**

On September 2, 2009, at approximately 6:00 a.m., while being evaluated at § 87(2)(b) Medical Center, § 87(2)(b) stated to medical personnel that police had grabbed him and forced him to fall and that his head had struck the ground. This statement is noted on § 87(2)(b)’s Emergency Physician Record.

#### **Witness:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black female.

#### **Testimony**

§ 87(2)(b) who is an acquaintance of § 87(2)(b)s, made a statement regarding this incident on a video recording that was created on September 2, 2009 by either § 87(2)(b) or his daughter, § 87(2)(b) and provided to the investigation by § 87(2)(b) at the time of his interview. She also made a statement to the CCRB via telephone on December 1, 2009 (encl. 6H). Inconsistencies with and significant additions to § 87(2)(b)s statement are summarized below.

§ 87(2)(b) was sitting on a stoop outside of 135 Albany Avenue in Brooklyn when she saw PO Chen and PO Winters pull up in a vehicle nearby to § 87(2)(b) who was at the time one house length away from § 87(2)(b). § 87(2)(b) initially stated that, before the officers “tackled” § 87(2)(b) they repeatedly told him that they had seen him and asked where “it” was at. § 87(2)(b) asked the officers what they were talking about and one of the officers replied that § 87(2)(b) already knew. § 87(2)(b) told the officers that he was on his way home from the train station to see the mother of his child. § 87(2)(b) later stated that the officers had not said anything before they tackled § 87(2)(b).

The officers grabbed § 87(2)(b) threw him against a metal fence and tackled him. § 87(2)(b) provided the following account of the tackle: One officer wrapped his arm around § 87(2)(b)s entire neck, including his jugular, and the other officer grabbed § 87(2)(b)s legs. § 87(2)(b) initially stated that she did not know which officer grabbed which part of § 87(2)(b) but later stated that it was PO Chen who grabbed his neck. The officers then lifted § 87(2)(b) up and brought him forcefully to the ground. § 87(2)(b) landed on his side § 87(2)(b) did not know which side). PO Chen fell to the ground with § 87(2)(b) and then held him while PO Winters

handcuffed him. § 87(2)(b) made no mention of either officer twisting § 87(2)(b)'s ankle.

### **Attempts to Contact Civilians**

After § 87(2)(b) provided a telephone statement on December 1, 2009, she missed an interview appointment without first calling to cancel or reschedule and did not respond to the investigation's subsequent attempts at contacting her. The other witnesses whose telephone numbers were provided by § 87(2)(b) – § 87(2)(b) (exact last name unknown), § 87(2)(b) (exact last name unknown) and § 87(2)(b) – could not be reached by the investigation.

### **NYPD Statements:**

#### **Subject Officer: PO DARRYL CHEN**

- *PO Darryl Chen is a § 87(2)(b)*
- *On September 1, 2009, PO Chen worked from 1:00 p.m. to 9:35 p.m.. He was assigned to automobile conditions. From 1:00 p.m. to 8:25 p.m., PO Chen worked in plainclothes with PO Faualhaber and PO Borukhoe. From 8:25 p.m. to 9:35 p.m., PO Chen worked in uniform with PO Joshua Winters and was assigned to marked RMP 2625.*

#### **Memo Book (encl. 7A-C)**

At 9:00 p.m., PO Chen noted that there was one male under arrest in front of 141 Albany Avenue. At 9:08 p.m., PO Chen was doing administrative work at the stationhouse. At 10:00 p.m., he issued § 87(2)(b) a summons for disorderly conduct.

#### **Summons # § 87(2)(b) (encl. 8A-B)**

Summons § 87(2)(b) was issued to § 87(2)(b) by PO Darryl Chen on September 1, 2009. The summons indicates that § 87(2)(b) was blocking pedestrian/vehicular traffic in front of 141 Albany Avenue in Brooklyn at 9:03 p.m. on that same day.

### **Testimony**

PO Darryl Chen was interviewed at the CCRB on February 5, 2010 (encl. 9A-C). On September 1, 2009, at approximately 9:00pm, PO Darryl Chen and PO Joshua Winters were driving southbound on Albany Avenue in Brooklyn in the general vicinity of 141 Albany Avenue, which PO Chen knew to be a drug-prone location. PO Winters was in the passenger seat. PO Chen noticed § 87(2)(b) walking northbound on the sidewalk approximately ten feet in front of him. As PO Chen watched § 87(2)(b) dropped a small white object to the ground. The object was smaller than a fist and PO Chen could not make out whether or not it was a bag. Based on the object's size and general appearance and his experience making drug arrests in the area, PO Chen suspected that the object was a controlled substance. PO Chen stopped his car approximately 10 feet away from § 87(2)(b) exited his vehicle and began to walk toward the white object. § 87(2)(b) picked the object up, put it in his mouth and said, "You're not locking me up for this." PO Chen then made the decision to place § 87(2)(b) under arrest for tampering with evidence.

PO Chen approached § 87(2)(b) and said, "I already seen what you swallowed." § 87(2)(b) denied having swallowed anything. § 87(2)(b) was five feet away from PO Chen at this time. § 87(2)(b) then intentionally "flopped to the ground while falling towards" PO Chen in an apparent attempt to resist arrest. § 87(2)(b)'s entire frame made contact with PO Chen at this time, and the force of § 87(2)(b)'s body falling into PO Chen caused PO Chen to fall to the ground. Both PO Chen and § 87(2)(b) landed on their sides. PO Chen landed on his knee first,

followed by his thigh; he did not see which part of § 87(2)(b)'s body made contact with the ground first. PO Chen was not injured and did not notice any injuries on § 87(2)(b) at this time. PO Chen handcuffed § 87(2)(b) within seconds of landing on the ground. PO Winters was standing behind PO Chen and did not make any physical contact with § 87(2)(b). PO Chen was the only officer who made any physical contact with § 87(2)(b) throughout the course of the incident. There was no point at which either PO Chen or PO Winters made any contact with § 87(2)(b)'s ankle or shin area and PO Chen had no knowledge of any event that may have caused injury to § 87(2)(b)'s ankle or exacerbated any pre-existing injury. There was no point at which PO Chen grabbed § 87(2)(b)'s neck. When § 87(2)(b) was on the ground, he provided only slightly resistance to being handcuffed, which PO Chen attributed to "nervousness" on § 87(2)(b)'s part.

PO Chen and PO Winters then escorted § 87(2)(b) to the stationhouse. § 87(2)(b) was not limping at this time. When PO Chen arrived at the stationhouse, he did not have any intention of charging § 87(2)(b) with anything besides tampering with evidence. He informed the desk sergeant of what had happened and then brought § 87(2)(b) to the holding cells. PO Chen then briefly left the holding cell area. When PO Chen returned to the holding cells, § 87(2)(b) apologized again. At this time, PO Chen decided to issue § 87(2)(b) a summons for disorderly conduct. PO Chen made this decision because, "At this time, I wasn't sure what he actually swallowed. I saw the white object. I wasn't 100%." During his interview, PO Chen explained that he exercised his discretion not to charge § 87(2)(b) because § 87(2)(b) was apologetic and that, because the narcotics had not been recovered, the ADA would likely have declined to prosecute the case.

PO Chen then issued § 87(2)(b) a summons for disorderly conduct. At this time, PO Chen noticed that § 87(2)(b) was limping. § 87(2)(b) had not been limping when PO Chen had brought him into the stationhouse. PO Chen asked § 87(2)(b) what was wrong with his leg, and § 87(2)(b) replied that he had an old injury that acts up occasionally. PO Chen offered to call an ambulance but § 87(2)(b) declined.

During his interview, PO Chen was presented with the disorderly conduct summons he had issued to § 87(2)(b). PO Chen examined the summons, confirmed that he had written it and explained that the violation code on the summons, 240.20(5), refers to blocking pedestrian traffic. When PO Chen was asked if he had actually seen § 87(2)(b) blocking pedestrian traffic, PO Chen stated that § 87(2)(b) had in effect blocked the sidewalk when he fell forward onto PO Chen immediately prior to being handcuffed. When asked if there were any pedestrians on the sidewalk during the time that § 87(2)(b)'s body was allegedly obstructing it, PO Chen replied, "At that time – I'll be honest – I really didn't notice."

**Witness Officer: PO JOSHUA WINTERS**

- PO Winters is § 87(2)(b).
- On September 1, 2009, PO Winters worked in uniform from 1:00 p.m. to 9:35 p.m. He was assigned to a conditions foot post on Franklin Avenue.

**Memo Book (encl. 10A-B)**

At 5:55 p.m., PO Winters noted that PO Chen had made an arrest in the vicinity of the intersection of Albany Avenue and Dean Street in Brooklyn.

**Testimony**

PO Joshua Winters was interviewed at the CCRB on March 23, 2010 (encl. 11A-C). Inconsistencies with and additions to PO Chen's statement are summarized below.

PO Chen and PO Winters were driving in the vicinity of 141 Albany Avenue in Brooklyn when PO Chen suddenly put the RMP in park and quickly exited the vehicle. PO Winters exited the vehicle seconds later and began to walk around it to the driver's side. The only thing he heard at this time was PO Chen saying, "Give me your hands!" As PO Winters reached the driver's side of the vehicle, he saw PO Chen and § 87(2)(b) on the ground. PO Chen was attempting to handcuff § 87(2)(b). At the time of his interview, PO Winters did not recall having seen § 87(2)(b) at all before he saw him on the ground with PO Chen. § 87(2)(b) was not actively resisting PO Chen's attempts to handcuff him and did not appear to be injured in any way. PO Winters did not make any physical contact with § 87(2)(b) before § 87(2)(b) was escorted to the RMP and did not see PO Chen making any physical contact with § 87(2)(b) besides handcuffing him. He never saw PO Chen place either of his arms on or against § 87(2)(b)'s neck or do anything to § 87(2)(b) that could have caused injury to his ankle. PO Winters did not recall anything that PO Chen and § 87(2)(b) said to each other inside the stationhouse. After § 87(2)(b)'s arrest was processed, PO Winters left the stationhouse while PO Chen was still inside because his tour of duty was over.

#### **Medical Records (encl. 12A-V)**

On September 2, 2009, at approximately 6:00 a.m., § 87(2)(b) was evaluated by § 87(2)(b), M.D. at § 87(2)(b) Medical Center in Brooklyn. § 87(2)(b) was complaining of pain and swelling in his right ankle and pain in his neck. After an x-ray revealed that § 87(2)(b)'s ankle was not fractured, he was diagnosed with an unspecified "ankle injury" and released. His discharge instructions were to take painkillers and follow up with an orthopedist.

#### **NYPD Documents**

##### **Command Log (encl. 14A)**

The command log entry for § 87(2)(b)'s arrest at 8:50 p.m. notes that § 87(2)(b) was arrested for tampering with physical evidence and criminal possession of a controlled substance in the seventh degree.

##### **UF-49 (encl. 13A-B)**

The UF-49 was completed by Sgt. Georgina Gonzalez, who was the 77<sup>th</sup> Precinct patrol supervisor at the time of the incident. It indicates that when Sgt. Gonzalez interviewed § 87(2)(b) at § 87(2)(b) Medical Center on the night of the incident, § 87(2)(b) informed her that two police officers had approached him and that PO Chen had grabbed him by his neck and knocked him to the ground, causing injury to his right foot.

#### **Other Evidence**

At the time of his interview, § 87(2)(b) provided a DVD containing two photographs of his ankles side by side and two photographs of his right ankle, all of which were taken by his daughter, § 87(2)(b) on September 3, 2009. These photographs show that § 87(2)(b)'s right ankle was noticeably swollen at the time that they were taken.

#### **Summons/Arrest for Incident and Disposition (encl. 17K)**

- On July 19, 2010, a search of the Office of Courts Administration and E-Courts databases revealed that summons number § 87(2)(b) is no longer on file.

#### **Status of Civil Proceedings (encl. 18A-B)**

- § 87(2)(b) filed a Notice of Claim with the City of New York on November 23, 2009, claiming psychological and physical distress, pain and suffering, damage to property, fear and

other trauma, legal expenses, deprivation of liberty and economic loss and seeking a “reasonable amount” of compensation as redress. On June 3, 2010, a representative of § 87(2)(b) s legal counsel for this claim informed the investigation that his case had been adjourned and that no 50-H hearing had been or would be conducted.

§ 87(2)(b)

#### **Civilian CCRB History (encl. 2A)**

- This is the first CCRB complaint filed by § 87(2)(b)

#### **Subject Officer CCRB History (encl. 1B-C)**

- PO Darryl Chen has been a member of the service for 16 years and there are no substantiated CCRB allegations against him.

### **Conclusion**

#### **Identification of Subject Officer**

PO Chen testified that he was the only officer who made physical contact with § 87(2)(b) during his arrest and confirmed that he subsequently issued summons number § 87(2)(b) to § 87(2)(b)

#### **Investigative Findings and Recommendations**

##### **Allegation A: PO Darryl Chen used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Chen reached around his neck from behind and secured him in a chokehold that did not obstruct his breathing. He also alleged that, while he was on the ground, an officer who he could not see twisted his right ankle, causing an ankle sprain. PO Chen denied grabbing § 87(2)(b) around the neck and denied making any physical contact with his ankle or shin area at any time.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). § 87(2)(b) s sworn CCRB testimony indicates that he had not seen or heard any police officers before he felt PO Chen’s arm around his neck and that he could not recall anything that took place between the time that he was grabbed and the time that he found himself on the ground. By contrast, in filing his complaint with IAB, § 87(2)(b) stated that he was “tackled” and that, before this occurred, an officer ordered him to “come” and accused him of having put something in his mouth. § 87(2)(b) further told IAB that his leg was broken during the incident, which his medical records refute. Despite claiming in his sworn statement that he was grabbed around the neck before being brought to the ground, § 87(2)(b) indicated in his telephone statement that he was unsure of whether he was grabbed before or after he was handcuffed. Likewise, § 87(2)(b) the only civilian witness to the incident, initially stated that the officers conversed with § 87(2)(b) before making physical contact with him but later stated that they did not. She also initially stated that she was unsure of which officer grabbed § 87(2)(b) s neck but later attributed the grab to PO Chen. § 87(2)(b) further stated that the officers threw § 87(2)(b) against a metal gate, which § 87(2)(b) did not allege in any of his statements.

According to PO Chen, when PO Chen approached § 87(2)(b) and stated that he had seen

what § 87(2)(b) had swallowed, § 87(2)(b) who was five feet away from PO Chen at the time, intentionally fell forward and downward in an attempt to resist arrest, at which point § 87(2)(b)'s entire frame collided with PO Chen and forcibly knocked him to the ground without causing any injury. Given that § 87(2)(b) was standing five feet away from PO Chen at this time, the investigation finds it to be implausible that § 87(2)(b) was in a position to knock PO Chen to the ground simply by falling toward him, let alone that § 87(2)(b)'s "entire frame" could have made contact with PO Chen during his fall. Furthermore, NYPD records indicate that PO Chen did not charge § 87(2)(b) with resisting arrest. As noted above, PO Winters did not see how § 87(2)(b) was brought to the ground.

§ 87(2)(b), § 87(2)(g)

**Allegation B: PO Darryl Chen issued a summons to § 87(2)(b)**

Summons § 87(2)(b), which was issued to § 87(2)(b) by PO Chen, indicates that § 87(2)(b) violated Penal Law Section 240.20, subdivision five (encl. 1A), by blocking pedestrian/vehicular traffic in front of 141 Albany Avenue in Brooklyn at the time of his arrest. § 87(2)(b) alleged that PO Chen issued this summons to him without probable cause to do so. During his interview, PO Chen examined this summons and confirmed that he had written it. When PO Chen was asked if he had actually seen § 87(2)(b) committing the violation that he was cited for, PO Chen replied that § 87(2)(b) had in effect blocked the sidewalk when he fell forward onto PO Chen immediately prior to being handcuffed. By PO Chen's own testimony, § 87(2)(b) was handcuffed within seconds of falling on the ground. When PO Chen was asked if there were any pedestrians on the sidewalk during the time that § 87(2)(b)'s body was allegedly obstructing it, he replied, "At that time – I'll be honest – I really didn't notice."

PO Chen testified that, at the time that he entered the stationhouse with § 87(2)(b) he did not have any intention of charging § 87(2)(b) with anything besides tampering with evidence. During his interview, PO Chen stated that his decision to refrain from charging § 87(2)(b) with evidence tampering was made after § 87(2)(b) had already been processed (i.e., after § 87(2)(b)'s arrest had already been documented in the command log) and § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_ :

Investigator: \_\_\_\_\_  
Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Supervisor: \_\_\_\_\_  
Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Reviewer: \_\_\_\_\_  
Title/Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Reviewer: \_\_\_\_\_



Title/Signature

Print

Date